

**MEMORANDUM OF AGREEMENT
BETWEEN THE
ARCHITECT OF THE CAPITOL
AND
UNITED STATES ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT**

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the United States Army Corps of Engineers, Baltimore District (hereafter referred to as the Baltimore District") and The Architect of the Capitol (hereafter referred to as "CLIENT") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of services, by the U.S. Army Corps of Engineers, for The Provision Of Planning And Preliminary Design Work For Canal Place And The Surrounding Areas That Affect And Are Affected By The Development Of Canal Place. This MOA is entered into pursuant to the following authorities:

The Economy Act (31 USC 1535)

ARTICLE II - SCOPE

Goods and services that the Baltimore District may provide under this MOA include: _____.

The responsibilities and duties of the CLIENT and the Baltimore District with respect to design, construction, and related services are described below and may be more specifically elaborated in Work Orders ("WO(s)") executed for specific services being requested by the CLIENT under this MOA.

Nothing in this MOA shall be construed to require the CLIENT to use the Baltimore District or to require the Baltimore District to provide any goods or services to the CLIENT, except as may be set forth in WO(s).

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Baltimore District and the CLIENT, each party shall appoint a Principal Representative(s) to serve as its central point of contact on matters relating to this MOA. The U.S. Army Engineer District, Baltimore (Baltimore District), acting on behalf of the U.S. Army Corps of Engineers, will be the primary Corps of Engineers organization responsible for assistance to the CLIENT under this MOA.

Additional representatives may be appointed to serve as points of contact on WOs.

ARTICLE IV - WORK ORDERS

In response to requests from the CLIENT for Baltimore District assistance under this MOA, the Baltimore District and the CLIENT shall execute mutually agreed upon written WOs, which shall include the following, as appropriate:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- funds certification and the amount of funds required and available to accomplish the scope of work as stated above;
- the CLIENT's fund citation and the date upon which the cited funds expire for obligation purposes;
- identification of individual project managers;
- identification of the CLIENT's proposed acquisition strategy and types of contracts to be used;
- identification of which party is to be responsible for Government-furnished equipment, contract administration, records maintenance and contract audits;
- identification of each party's responsibilities regarding rights-to-data, software and intellectual property;
- identification of responsibilities and procedures for coordination with other agencies as may be required;
- procedures for amending or modifying the WO; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after the appropriate WO has been signed by a representative of each party authorized to execute that WO. Upon signature by each party's representative, a WO shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and a WO, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

The Baltimore District shall provide the CLIENT with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in WOs.

The Baltimore District shall identify representatives authorized to sign WOs, as well as individual project manager(s) responsible for managing assistance to the CLIENT under this MOA.

The Baltimore District shall use its best efforts to determine the most effective mix of in-house services for providing goods and/or services under the provisions of this MOA.

The Baltimore District shall provide detailed periodic progress, schedule, financial and other status reports to the CLIENT as agreed to in the WO(s). Financial reports shall include information on all funds received, obligated, and expended; as well as forecasted obligations and expenditures.

B. Responsibilities of the CLIENT

The CLIENT shall certify, prior to the execution of each WO under this MOA, that the WO complies with the requirements of the Economy in Government Act.

The CLIENT shall pay all costs associated with the Baltimore District's provisions of goods or services under this MOA and shall certify, at the time of signature of a WO, the availability of funds necessary to accomplish that WO.

The CLIENT shall insure that only authorized CLIENT contracting officers sign WOs.

The CLIENT shall develop draft WOs to include scope of work statements.

The CLIENT shall obtain for the Baltimore District all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from Federal, state and local agencies, as necessary during the execution of each WO.

The CLIENT shall retain responsibility for requirements imposed by other Federal, state and local agencies. The Baltimore District shall provide support and services to assist CLIENT in meeting any requirements within the scope of specific requirements set forth in WOs.

The CLIENT shall retain responsibility for compliance of the project with the provisions of the National Environmental Policy Act (NEPA) and other applicable environmental statutes or regulations. If requested and documented in WO(s), the Baltimore District may provide technical services for preparation of required environmental studies, analysis, and documentation required for NEPA compliance.

The CLIENT as generator shall retain legal liability, as between the CLIENT and the Baltimore District and its contractors for all hazardous substances and wastes associated with work under this MOA.

ARTICLE VI - FUNDING

The CLIENT shall pay all costs associated with the Baltimore District's provision of goods or services under this MOA. The CLIENT shall formally transfer funds to the Baltimore District or certify the availability of funds to the Baltimore District prior to the Baltimore District incurring costs against any WO. As such, each WO shall include, or be accompanied by, a certification of the availability of funds necessary to accomplish that WO. Each WO shall also include a funding plan establishing a schedule and estimated amounts for provision of funds to the Baltimore District under

that WO. The funding plan in each WO will also indicate that funds are to be provided by CLIENT to Baltimore District, on a reimbursable basis, via DD Form 448 - Military Interdepartmental Purchase Request (MIPR) or a CLIENT equivalent. The Baltimore District shall bill the CLIENT monthly for costs incurred, using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds, and the CLIENT shall reimburse the Baltimore District within 30 days of receipt of an SF-1080. Payment shall be made by the CLIENT by check made payable to Finance and Accounting Officer, U.S. Army Engineer District, Baltimore.

If the Baltimore District forecasts its actual costs under a WO to exceed the amount of funds available under that WO, it shall promptly notify the CLIENT of the amount of additional funds necessary to complete work under that WO. The CLIENT shall either provide the additional funds to the Baltimore District, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that WO.

Within 90 days of completing the work under a WO, the Baltimore District shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Baltimore District shall return to the CLIENT any funds advanced in excess of the actual costs as then known, or the CLIENT shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the CLIENT's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the Baltimore District shall be governed by Department of the Army policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising from or relating to contracts awarded by the Baltimore District shall be resolved in accordance with Federal law and the terms of the individual contract. The Baltimore District shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals, ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring claims directly to the United States Court of Federal Claims.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the CLIENT and the Baltimore District shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event that such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

ARTICLE X - LIABILITY

If liability of any kind is imposed on the United States relating to the Baltimore District's provision of goods or services under this MOA, the Baltimore District will accept accountability for its actions, but the CLIENT shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the CLIENT's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the CLIENT. The Baltimore District may provide, upon request, any assistance necessary to support the CLIENT's justification or explanations of the CLIENT's programs conducted under this MOA. In general, the CLIENT is responsible for all public information. The Baltimore District may make public announcements and respond to all inquiries relating to the administration process. The CLIENT and the Baltimore District shall make their best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to WOs under this MOA.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the CLIENT and the Baltimore District.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

D. Manifests and Related Documents

Baltimore District personnel are authorized to execute all manifests and related documents, Federal and State, on behalf of the CLIENT that pertain to work performed under this MOA by the Baltimore District or its contractors. Baltimore District personnel shall annotate the manifests and related documents with the phrase "On behalf of CLIENT." If any applicable regulations do not permit the Baltimore District to sign such documents on behalf of CLIENT, the Baltimore District shall contact the CLIENT representative for specific guidance. Upon fiscal completion of work under a WO, the Baltimore District shall forward manifests and related documents to the CLIENT. The Baltimore District shall retain contract-related documents.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective on the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the CLIENT shall continue to be responsible for all costs incurred by the Baltimore District under this MOA and its WOs, and for all costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the CLIENT and the Baltimore District.

CLIENT

CORPS OF ENGINEERS

Title:
Architect of the Capitol

CHARLES J. FIALA, JR.

Title: Colonel
Corps of Engineers
District Engineer